

suggested by the prior art, the Applicants submit that none of claims 1-24 specifically recites "moving the flap using an electrode disposed in the one or more sidewalls" as stated by the Examiner. Consequently, the claims should not be interpreted as including such a limitation.

#### CLAIM OBJECTIONS

The Examiner has objected to claim 26 on the grounds that "stiction" should be --friction-- in line 1. The Applicants contend that the word in question should be "stiction" as it was originally written. The word "stiction" is used consistently in the claims and the specification. See e.g., page 3, line 13; page 8, lines 1, 14, 20; page 9, line 30; and page 16, line 13. The word "friction" by contrast does not appear at all in the specification or claims. The Applicants submit that the term "stiction" has a well-known meaning within the art that is distinguishable from the meaning of "friction". The word --stiction-- generally refers to the tendency of two objects in contact to stick together and resist movement relative to one another. Stiction includes resistance to relative movement in a direction *perpendicular* to the plane of contact between the two objects. "Friction", by contrast describes forces that resist movement of two objects along a direction *parallel* to the plane of contact between them. Consequently, the Applicants submit that the claim is not objectionable as it is written. The Applicants therefore respectfully request that the Examiner withdraw the objection.

CLAIM REJECTIONS - 35 USC 103.

The Examiner has rejected claims **25** and **26** under 35 USC 103(a) as being unpatentable over U.S. Patent 6,256,430 to Jin et al. (hereinafter Jin). In rejecting the claims, the  
5 Examiner states that Jin discloses a flap, movable between two different positions, having magnetic material disposed on the flap and a force applied to the flap. The Examiner argues that although Jin fails to disclose magnetic material having a stepped pattern and that the applied  
10 force on the flap reduces friction the shape of the magnetic material would have no impact on the functionality of the material. The Examiner concludes that it would have been obvious to one of skill in the art at the time the invention was made to use a stepped magnetic pattern since  
15 it would merely constitute a functionally equivalent substitution of a comparable material. The Examiner further argues that, even though Jin does not disclose reduction of friction on the flap, it would be obvious because a skilled artisan would recognize that any  
20 mechanical device reduces a portion of the friction applied to the flap.

The Applicants respectfully traverse the rejection on the grounds that the Examiner has not met her burden of establishing a prima facie case of obviousness. The  
25 Examiner has pointed to no specific teaching within the prior art supporting her premise that the shape of the magnetic material would not affect its functionality. The Applicants respectfully request that the Examiner provide references under 37 C.F.R. § 1.104(d)(1) or, if the  
30 Examiner's rejection is based on facts within her personal knowledge, or that of another employee of the Office, that

the Examiner provide an affidavit under 37 C.F.R. § 1.104(d)(2) supporting her contention that the shape of the magnetic material would not affect its functionality or that any mechanical device reduces friction in the flap.

5 With respect to claim 25, the inventors have, in fact discovered just the opposite of what the Examiner contends. Specifically, the inventors have discovered that a stepped pattern may increase the amount of torque applied to the flap when exposed to a magnetic field (see the section of  
10 the specification bridging page 5, line 33 to page 6, line 25). Thus, the stepped pattern does affect the functionality of the magnetic material. If, as the Examiner contends, the prior art teaches that the shape of the magnetic material has no effect on its functionality  
15 then the prior art clearly teaches away from the invention as recited in claims 25 and 26 and a prima facie case of obviousness is not present.

With respect to claim 26 the applicants submit that the Examiner has made impermissible use of hindsight to support  
20 the rejection. Specifically, the Examiner has pointed to no teaching that suggests an incentive for reduction of stiction by applying a fixed force to the flap to move the flap at least partially out of contact with an underlying base as recited in claim 26. Therefore, the Examiner has  
25 not established a prima facie case of obviousness since obviousness cannot be established absent some teaching, suggestion or incentive supporting the combination (ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F. 2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984)). Absent  
30 such a showing in the prior art, the Examiner has

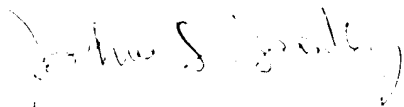
impermissibly used the applicants teaching to hunt through the prior art for the claimed elements and combine them as claimed (see In re Vaeck, 947 F. 2d 488, 20 USPQ 2d 1438 (Fed. Cir. 1991); In re Bond, 910 F. 2d 831, 15 USPQ 2d 1566 (Fed. Cir. 1990); In re Laskowski, 871 F. 2d 115, 117, 10 USPQ 2d 1397, 1398 (Fed. Cir. 1989)). The use of hindsight is never permissible to establish obviousness.

Therefore, the Applicants submit that claims 25 and 26 are unobvious over Jin and define an invention suitable for patent protection.

#### CONCLUSION

The Applicants respectfully request entry of the amendment prior to consideration of the application and that the Examiner point out the allowable material in the next office action.

Respectfully submitted,



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